

### REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated April 28, 2003 (Paper No. 13). Upon entry of this Amendment, claims 1-17 will remain pending in this application. Claims 14-16 are presently withdrawn. The amendments to the claims are supported by the specification and the original claims. No new matter is incorporated by this Amendment.

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The specification is objected to because of informalities. Specifically, the Office Action pointed out two typographical errors. In response, the specification has been amended to address each of the two typographical errors. Hence, the objection is overcome and its withdrawal is respectfully requested.

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Claims 1-13 are rejected under 35 U.S.C. § 112, first paragraph, as purportedly containing subject matter that was not described in the specification. Applicants respectfully traverse.

The Office Action asserts that the specification does not provide for the gas stay being disposed in parallel with the connecting rod throughout the movement of the hinge arm.

Initially, Applicants point out that claim 1 has been amended by removing the phrase "throughout movement of said hinge arm." Applicants note that the cancelled phrase was suggested by the previous Examiner in an attempt to, according to the Examiner, clarify the claim and place it in condition for allowance. With respect to the claim in its present form, Applicants again respectfully submit that the relationship between the gas stay and the connecting rod is disclosed in the specification and drawings

(i.e. page 12, lines 18-20 and Figs. 2 and 3). The specification at page 12, lines 18-21 states:

**A gas stay apparatus 50 is disposed between the mounting base 32 and the side rail 16 at almost the same height as and approximately in parallel with the connecting rod 46 and has a gas spring 51 jointing the side rail 16 and the hinge arm 23.**

Accordingly, the claim in its current form is at least supported by the above noted portion of the specification. Furthermore, Figs. 2 and 3 show the gas stay and connecting rod being approximately parallel when viewed from the side. Applicants submit that the specification adequately describes each feature of the claimed invention and that the claims fully comply with 35 U.S.C. § 112.

The above remarks overcome this rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite. Applicants also respectfully traverse this rejection.

The Office Action asserts that the phrase “said vehicle body” in claim 1 lacks antecedent basis. In response, claim 1 has been amended to recite “said rear gate is pivotally connected with a body of said vehicle.”

The Office Action also asserts that the phrase “said power source” in claim 3 is unclear. In response, claim 3 has been amended to recite “said power source unit”. Claim 1, from which claim 3 depends, provides antecedent basis for this feature of claim 3.

The Office Action further asserts that the phrase “an operating signal” in claim 4 is indefinite. In response, claim 4 has been amended to recite “the detection signal.”

In addition, the Office Action asserts that the terminology "opening speed" in claim 6 is indefinite. In response, claim 6 has been amended to recite "opening speed of the rear gate."

The amendments to the claims and the above remarks overcome this rejection. Thus, reconsideration and withdrawal are respectfully requested.

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Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as purportedly anticipated by German Patent Publication No. 41 24 869 ('869). The Office Action asserts that the '869 document teaches each feature of the claimed invention. Applicants respectfully traverse.

The present invention concerns a rear gate opening and closing apparatus for automatically opening and closing a rear gate of a vehicle. The apparatus includes a power source unit that produces power to actuate the rear gate; a slider that transforms the power into a reciprocating motion and for traveling in the longitudinal direction of the vehicle; and a hinge arm provided for attachment at an upper end of the rear gate so that the rear gate is pivotally connected with a body of the vehicle. The apparatus also includes a connecting rod that interlocks the slider and the hinge arm, the rod transmitting the reciprocating motion to the hinge arm; a mounting base that supports the power source unit and the slider; a mounting base installer for detachably installing the mounting base in a space formed by a rear rail, a side rail and an under roof of the vehicle; and a gas stay, rotatably attachable to the side rail at one end thereof and attached to the hinge arm at the other end thereof, disposed at substantially the same height as and approximately in parallel with said connecting rod and extending in the longitudinal direction of the vehicle for biasing said rear gate in an opening direction.

The '869 document fails to teach or fairly suggest each and every feature of the present invention. The M.P.E.P. states

**A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.  
M.P.E.P § 2131.01.**

The '869 document fails to teach or describe an apparatus having: a) a slider suitable for transforming power into a reciprocating motion in the longitudinal direction of the vehicle; b) a mounting base installer suitable for detachably installing the mounting base in a space formed by a rear rail, a side rail and under roof of the vehicle; and c) a gas stay extending in the longitudinal direction of the vehicle provide between the side rail and the hinge arm. Thus, as stated above, the '869 document fails to teach or describe each and every feature of the claimed invention and thus cannot anticipate the claimed invention.

In view of the above remarks, Applicants respectfully submit that this rejection is overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 3, 4, 8, 9, 11-13 and 17 are rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga (U.S. Pat. No. 5,982,126).

Claims 5-7 are rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga, and further in view of Kato (U.S. Pat. No. 5,986,420).

Claim 10 is rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga, and further in view of Kowall et al. (U.S. Pat. No. 5,563,483).

These three rejections are addressed together as similar issues apply to all three. Furthermore, Applicants respectfully traverse each rejection.

The deficiencies of the '869 document are been discussed above. None of the secondary reference cited in the above three rejection remedy the deficiencies of the '869

document. None of the cited prior art documents teach or fairly suggest an apparatus having a) a slider suitable for transforming power into a reciprocating motion in the longitudinal direction of the vehicle; b) a mounting base installer suitable for detachably installing the mounting base in a space formed by a rear rail, a side rail and under roof of the vehicle; and c) a gas stay extending in the longitudinal direction of the vehicle provide between the side rail and the hinge arm. Moreover, there is nothing in the prior art of record which would have motivated one of ordinary skill in the art to modify the teachings of the prior art by employing the features of the present invention discussed above.

In the view of the above remarks, Applicants respectfully submit that each of these three rejections is overcome. Reconsideration and withdrawal of all three rejections are respectfully requested.

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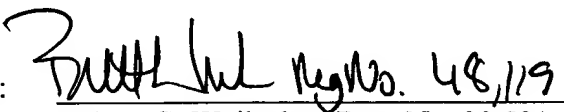
Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objection and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 CFR §§1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032405.061.

If an extension of time under 37 CFR § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032405.061.

Respectfully submitted,

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Dated: July 28, 2003  
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